

Bill Jennings
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel: 209-464-5067
Fax: 209-464-1028
E-mail: deltakeep@aol.com

Mike Jackson
Law Office of Mike Jackson
P.O. Box 207
429 W. Main Street
Quincy, CA 95971
Tel: 530-283-1007
Fax: 530-283-0712
E-mail: mjatty@sbcglobal.net

Andrew Packard
Law Office of Andrew Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227
Fax: 707-763-9227
E-mail: andrew@packardlawoffices.com

For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of a Conditional Waiver of Waste)	
Discharge Requirements for Small Food Processors)	
and Small Wineries; California Regional Water)	PETITION FOR REVIEW
Quality Control Board – Central Valley Region)	
Order No. R5-2009-0097)	

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting a Conditional Waiver of Waste Discharge

Requirements for Small Food Processors and Small Wineries, on 8 October 2009. *See* Order No. R5-2009-0097. The issues raised in this petition were raised in timely written comments.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Order No. R5-2009-0097, a Conditional Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries. A copy of the adopted Order is attached as Attachment No. 1.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

8 October 2009

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letter on 28 August 2009. The comment letter and the following comments set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

Waivers of Waste Discharge Requirements may be made in accordance with California Water Code § 13269. "Waiver (a)(1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest."

The waiver of Waste Discharge Requirements would allow for the discharge of up to 120,000 gallons per year of wastewater from "small food processors" and wineries where the waste has been characterized as follows:

<u>Constituent</u>	<u>Units</u>	<u>Wineries</u>	<u>Food Processors</u>
pH	Std units	2 to 11	5 to 9
BOD	mg/l	300 to 12,000	300 to 2,000
Total Dissolved Solids (TDS)	mg/l	80 to 6,000	400 to 2,300
Total nitrogen	mg/l	1 to 50	1 to 150

At a wastewater flow rate of 120,000 gallons per year the maximum annual loading of the described pollutants to land would be: 12,000 pounds of BOD, 6,000 pounds of TDS and 150 pounds of nitrogen.

1. A pH of 2 is a hazardous waste. Title 22, section 66261.22.: Characteristic of Corrosivity. (a) A waste exhibits the characteristic of corrosivity if representative samples of the waste have any of the following properties: (1) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the EPA test method for pH or an equivalent test method approved by the Department pursuant to section 66260.21... (b) A waste that exhibits the characteristic of corrosivity specified in subsection (a)(1) or (a)(2) of this section has the EPA Hazardous Waste Number of D002." Hazardous waste may not be discharged to land based on a waiver of Waste Discharge Requirements. The Regional Board, in late revisions to the waiver, prohibited the discharge of hazardous substances. However, low pH can cause mobilization of metals from the soils structure, allowing the metals to migrate to groundwater. Low pH conditions contribute to increased solubility of numerous substrate elements, particularly metals. The extreme pH values allowed to be discharged under the waiver at least threaten to increase pollutant migration to groundwater.
2. TDS levels above 450 mg/l threaten to exceed the agricultural water quality goal and above 500 threaten to exceed the secondary drinking water maximum contaminant level (MCL). MCLs are incorporated into the Central Valley Board's Basin Plan as water quality objectives for groundwater. Levels of TDS up to 6,000 mg/l at a minimum threaten to exceed the MCL of 500 mg/l and degrade the drinking water beneficial use of groundwater. Such threat is not in compliance with CWC Section 13269 since the water quality control plan (Basin Plan) Chemical Constituents water quality objective for MCLs could be violated.

3. Nitrate levels above 10 mg/l exceed the primary drinking water MCL which is incorporated into the Central Valley Regional Board's Basin Plan. Levels of nitrate up to 150 mg/l at a minimum threaten to exceed the MCL and degrade the drinking water beneficial use of groundwater. Such threat is not in compliance with CWC Section 13269 since the water quality control plan (Basin Plan) could be violated.

4. The Central Valley Regional Board has under the existing waiver allowed winery wastewater discharges to geological areas of fractured bedrock with very little soil cover. This can be readily observed in the Counties of Amador and Stanislaus. There are other areas along the Valley floor, such as documented around Lodi, where groundwater elevations are very near the ground surface and migration of pollutants to groundwater has been observed. Lake County has significant porous volcanic rock at times with little or no overlying soil allowing immediate migration of pollutants to ground or surface water supplies. The proposed waiver of Waste Discharge Requirements does not contain any requirement for wastewater disposal areas that is protective of groundwater quality. The proposed waiver has no minimum standard for soils in the disposal area or depth to groundwater. The allowances to discharge to areas which allow for immediate or rapid migration of pollutants to groundwater at a minimum threatens the beneficial uses of groundwater quality and exceedance of water quality standards as documented for nitrate and TDS.

A BOD of greater than 300 mg/l is a high strength waste as defined by virtually all Wastewater Engineering Texts. A wastewater with a BOD of 12,000 mg/l is an extremely high strength wastewater. In the cited areas there is no or little means of reduction of BOD levels prior to migration to groundwater.

5. The waiver allows for the land application of residual solids from wineries. Ms. Joann Kipps, a senior Engineer with the Regional Board's Fresno Office, has written a letter dated 20 July 2009 and posted on the Regional Board's web site at http://www.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/0908/triennial_rvw/triennial_review_kipps_com.pdf. This letter details the problems associated with the discharge of stillage wastes from wineries and that the Regional Board's practices are not protective of groundwater quality. We request that this letter be considered prior to adoption of the proposed waiver of Waste Discharge Requirements.
6. The threats to water quality, at a minimum the threats to exceed the MCLs for nitrate and TDS, associated with the proposed waiver would violate the Antidegradation Policy (Resolution 68-16) which is incorporated into the Basin Plan. The Antidegradation Policy prohibits exceedance of water quality standards

by wastewater discharges.

7. The waiver discusses monitoring for fixed dissolved solids (FDS), not total dissolved solids. This brings up at least two issues; 1) water quality standards and objectives are listed in terms of total dissolved solids and sampling for fixed will not be capable of determining whether the discharge complies with standards and objectives, 2) volatile dissolved solids can migrate and degrade groundwater quality and contribute to pollution. The proposed sampling for FDS would be a waste of limited Discharger resources since it is useless in determining compliance with water quality standards and objectives.
8. Generally, the waiver is designed to cover wastewater discharges from wineries. Wine is not a life sustaining product and is sometimes associated with snobbery, the upper crust. Wine and other alcoholic beverages are associated with a myriad of social problems including alcoholism and drunk driving. Alcohol use is also forbidden by some religions. The Regional Board however feels that requiring these waste producers to treat their wastewater rather than allow California's groundwater to be degraded is not in the public's interest. Is the cost of a bottle of wine going to increase to levels that cause wine drinkers to stop their leisurely sipping if wastewater treatment is provided? The Regional Board did not assess the costs associated with providing treatment or the increase to a bottle of wine.

The waiver was modified in late changes based on CSPA's comments to contain an attempt at an antidegradation analysis. The attempted analysis only contains unsubstantiated, unsupported, undocumented conclusory statements totally lacking in factual analysis.

The waiver, Finding No. 30, acknowledges that groundwater quality will be degraded under the Order: "Because of the variability of soil and groundwater conditions throughout the Central Valley Region as cited in Finding No. 11, it is not possible to state with certainty that no discharge regulated under, and in compliance with, this Order will degrade groundwater quality. However, this Order includes the following specific requirements and conditions which constitute BPTC for the type of discharges regulated by this Order. These BPTC requirements will minimize degradation, prevent exceedance of any water quality objectives, and prevent impacts to beneficial uses."

Treatment processes for high BOD, nitrate, pH and total dissolved solids are readily available and can be considered best practicable treatment and control for wastewater discharges. The waiver does not require the wastestreams to be

treated; instead the waiver allows groundwater to be degraded by these discharges. It is not providing BPTC to allow groundwater degradation when treatment processes are readily available. The Regional Board does not discuss treatment alternatives in considering Antidegradation.

Groundwater is a precious resource in California. It is well documented in literature that large areas of California's groundwater resources are polluted with nitrate and salts. In many of these areas, the same areas where the wineries are located, groundwater is the only domestic and municipal supply. The Regional Board's "Antidegradation" analysis does not discuss the impacts of allowing degradation to areas reliant on groundwater for industrial, domestic and municipal supply. The Regional Board does not discuss the costs associated with degraded or polluted groundwater. The Regional Board does not discuss any costs except those possibly born by the discharger; a producer of a luxury product.

The analysis does not comply with the requirements of the State Board's Antidegradation Policy (Resolution 68-16) and California Water Code (CWC) Sections 13146 and 13247. CWC Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy. The State Board has adopted the Antidegradation Policy (Resolution 68-16), which the Regional Board has incorporated into its Basin Plan. The Regional Board is required by the CWC to comply with the Antidegradation Policy. California's antidegradation policy is composed of the State Board's Resolution 68-16. As a state policy, with inclusion in the Water Quality Control Plan (Basin Plan), the antidegradation policy is binding on all of the Regional Boards. Implementation of the state's antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 ("APU 90-004") and USEPA Region IX, "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12" (3 June 1987) ("Region IX Guidance"), as well as Water Quality Order 86-17.

9. The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality (State Antidegradation Guidance, pp. 3, 5, 18). Application of the policy does not depend on whether the action will actually impair beneficial uses (State Antidegradation Guidance, p. 6). Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances,

relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10).

10. The State Board's APU 90-004 specifies guidance to the Regional Boards for implementing the state policy and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.
11. Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources, and; 7) an assessment of the significance of changes in ambient water quality. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis.
12. Any antidegradation analysis must comport with implementation requirements in State Board Water Quality Order 86-17 and State Antidegradation Guidance,

APU 90-004 and Region IX Guidance. There is no antidegradation analysis in the proposed waiver and no indication that any has been undertaken.

13. The Central Valley Water Board acted as lead agency for this project under the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et seq.), and determined that the adoption of Resolution No. 82-036 would not cause a significant environmental impact and therefore, in accordance with CEQA, approved a Negative Declaration dated 23 December 1981. Since 1981 the regulation and knowledge of wastewater disposal has undergone significant change. In 1981 there was little groundwater monitoring at waste disposal sites. In 1981 priority pollutant knowledge was minimal, significant standards had not been developed and sampling was scarce. Since 1981 the Central Valley Regional Board has documented groundwater degradation issues at food processing facilities and at wineries. As the above comments address; the proposed discharges to land pose a threat to groundwater quality with low pH, high nitrate, salts (EC, TDS, chloride) and organic loadings. A twenty eight year old negative declaration did not address the potential impacts to groundwater quality and degradation of each of the designated beneficial uses. It is likely that an environmental impact report is required to assess the potential impacts related to the proposed waiver.
14. The required characterization to obtain coverage under the proposed waiver is wholly inadequate. The Findings indicate that pH levels can be low, yet sampling for pH is not required. Nitrate levels can be discharged at levels greatly exceeding water quality standards, yet sampling of the liquid wastestream is not required. BOD sampling is not required to assess the organic loading. Ongoing sampling is not required to assure that the original characterization was accurate or to assess the potential impacts to groundwater quality. Any characterization and assessment of the sites and potential to degrade groundwater quality should be made and certified by a registered professional engineer or geologist.

In conclusion the waiver threatens to cause violation of several sections of the Basin Plan and degrade groundwater quality contrary to CWC 13269. The waiver should not have been adopted without revision to eliminate the threat to groundwater quality. The Regional Board should issue individual Waste Discharge Requirements as the cited winery and food processing discharges do not constitute a low threat to water quality.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries. Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas. CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources. CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

- A. Vacate Order No. R5-2009-0097 and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirement.
- B. Alternatively; prepare, circulate and issue a new order that is protective of identified beneficial uses and comports with regulatory requirements.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments and our 28 August 2009 comment letter. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions. The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT

THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in a 28 August 2009 comment letter that was accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Jackson at (530) 283-1007.

Dated: 4 November 2009

Respectfully submitted,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachment No. 1: Order No. R5-2009-0097

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2009-0097
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
SMALL FOOD PROCESSORS AND SMALL WINERIES
WITHIN THE CENTRAL VALLEY REGION

Whereas, the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board), finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Water Board a report of waste discharge (RWD) containing such information and data as may be required by that Regional Water Board.
2. The Central Valley Water Board has a statutory obligation, pursuant to CWC Section 13263, to prescribe waste discharge requirements (WDRs) for each discharge of waste, except where the Regional Water Board finds that a waiver of WDRs for a specific type of discharge is not against the public interest as described in CWC Section 13269.
3. CWC Section 13269 authorizes the Regional Water Board to waive WDRs for specific types of discharge where such a waiver is in the public interest, is conditional, and may be terminated by that Regional Water Board at any time.
4. CWC Section 13269 provides, in part, that waivers of WDRs adopted after 1 January 2003 must be for specific types of discharges and must be renewed at a minimum of every five years, and that prior to renewing any waiver the Regional Water Board shall review the terms of the waiver at a public hearing and shall determine whether the discharge should instead be subject to general or individual WDRs.
5. On 26 March 1982, the Central Valley Water Board waived WDRs for 23 categories of discharges, including "food processing wastes spread on land" as set forth in Central Valley Water Board Resolution No. 82-036. The Central Valley Water Board acted as lead agency for this project under the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et seq.), and determined that the adoption of Resolution No. 82-036 would not cause a significant environmental impact and therefore, in accordance with CEQA, approved a Negative Declaration dated 23 December 1981.
6. As required by CWC Section 13269, Resolution No. 82-036 expired on 1 January 2003.
7. On 11 July 2003, the Central Valley Water Board adopted Resolution No. R5-2003-0106, *A Waiver of Waste Discharge Requirements for Small Food Processors, Including Wineries, Within the Central Valley Region* to provide a streamlined permitting process for its numerous small food processing facilities and

wineries. As required by CWC Section 13269, Resolution No. R5-2003-0106 expired on 11 July 2008.

8. ~~About 97 facilities were covered under Resolution No. R5-2003-0106. These existing facilities continue to need coverage and many new facilities have applied for coverage since the waiver expired.~~
9. The activities subject to this Order are those that result in the generation and disposal of waste, which is defined in CWC Section 13050(d). Prior to adoption of Resolution No. R5-2003-0106, such waste was often discharged to land without WDRs issued by the Central Valley Water Board. Due to the nature of the waste, such discharges could affect the quality of waters of the state.
10. The discharge of wastewater in compliance with the conditions of this Order poses a limited threat to waters of the state, but still could affect the quality of the waters of the state. If not properly managed, waste constituents discharged to land may migrate to groundwater or commingle with storm water runoff into surface water and affect water quality and its beneficial uses.

Salinity in discharges from facilities regulated by this Order has been occurring since before and after the initial 1982 waiver for small food processors including small wineries. This Order continues to regulate the salinity of food processing and winery discharges. Waiver enrollees and industry representatives are encouraged to participate in the development and implementation of a region-wide salinity control plan through Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) initiative.

11. Soil type, soil mantle thickness, and groundwater depth within the Central Valley are highly variable. Land discharge sites with little soil overlying fractured bedrock; highly transmissive soils such as sands and gravels; and/or shallow groundwater pose a higher risk of groundwater degradation. This Order incorporates conservative and stringent conditions of discharge in order to ensure that discharges regulated under this Order pose the lowest possible threat to water quality regardless of site-specific conditions.
12. Residual solids¹ that are applied to land from food processors and wineries may contain waste constituents that could affect the quality of the waters of the state. In addition, residual solids discharged to land may create odors and attract insects and rodents if not properly managed, thereby creating a condition of nuisance.
13. Waste contained in tanks may leak or spill and affect the quality of waters of the state. Waste removed from tanks for off-site disposal may not be properly disposed of and could therefore affect the quality of waters of the state.

¹ Residual solids are defined as plant matter that is generated during processing or separated from a wastewater stream for separate handling. Residual solids include leaves, stems, seeds, skins, pulp and settleable solids from fruit, vegetable, or grain processing.

14. Because discharges of waste in the manner described in this Order could affect the quality of the waters of the state, such discharges are subject to CWC Sections 13260 and 13263.
15. The Central Valley Water Board has reviewed Resolution No. R5-2003-0106 and determined that the discharge of certain process wastewaters and residual solids from small wineries and food processing operations will pose a low threat of nuisance or significant water quality degradation when managed in accordance with the conditions of this Order. Therefore, it is not necessary to regulate such discharges under waste discharge requirements as long as the discharger complies with this Order.
16. As used throughout this document, the term "small food processor" means any commercial entity that processes meat², vegetables, fruits, seeds, or nuts to create food products (including wine), or that processes vegetables, fruits, or nuts to separate the seeds for agricultural uses, and that meets the size criteria described herein.
17. The chemical character of process wastewater discharged from small food processors and wineries varies depending on the season and the particular operation being performed. Monitoring data submitted to the Central Valley Water Board shows that key constituents of individual food processing waste streams generally fall within the concentration ranges tabulated below. These values are being presented to demonstrate the necessity to continue to regulate these discharges to protect water quality, but they do not represent the character of the waste that this Order allows to be discharged to land. Individual process waste streams are typically commingled within the wastewater drainage and storage system with earlier and later flows that exhibit lower concentrations, and certain waste streams that might occur at food processing facilities are regulated or prohibited by this Order, as discussed below. Therefore, the extreme values tabulated below are not representative of the overall discharge authorized by this Order. Discharges of hazardous waste or designated waste would violate this Order (Specific Condition C.2) and dischargers must ensure that waste constituent concentrations in wastewater or residual solids discharged to land do not exceed hazardous waste levels and do not threaten to cause groundwater to exceed applicable water quality objectives. This Order does not authorize the treatment, storage, or disposal of hazardous waste. This Order requires dischargers to segregate high salinity waste streams and dispose of them off-site at an appropriately permitted facility (Specific Condition C.6). The resulting wastewater discharged to land will not threaten beneficial uses or exceed water quality objectives. The residual solids are no more than fruit pulp, skins, stems, etc. and would not be expected to contain high levels of sodium or chloride, or other non-decomposable salts.

² For the purpose of this Order, meat processors include commercial slaughterhouses and butchers. Small non-commercial facilities in hunting or fishing areas where individuals clean and dress wild fish and game are not subject to regulation under this Order.

Constituent	Units	Wastewater Concentration Range	
		Wineries	Other Food Processors
pH	Std.units	2 to 11	5 to 9
Biochemical Oxygen Demand	mg/L	300 to 12,000	300 to 2,000
Total Dissolved Solids	mg/L	80 to 6,000	400 to 2,300
Total Nitrogen	mg/L	1 to 50	1 to 150

18. If food processing wastewater is applied to cropped land or landscaped areas at reasonable hydraulic and nutrient loading rates, and in accordance with the conditions of this Order, there should be little potential for water quality degradation. The nitrogen in the wastewater and some of the nutritive salts will be utilized by the plants. In a well aerated mineral soil, the pH will be buffered, and the biochemical oxygen demand will be reduced through microbial activity. Oxidation of organic matter is enhanced by warm weather conditions, which are typical of the food processing season in the Central Valley Region. Where process wastewater is used for irrigation, best management practices to prevent discharges of irrigation tailwater will protect surface water quality.
19. Residual solids and wastewater generated by food processing can cause nuisance odors and attract vectors if not properly stored and/or discharged. However, use of best management practices, such as applying wastewater and residual solids at agronomic rates, incorporating the residual solids, and minimizing the potential for standing water, will prevent nuisance conditions.
20. Water is in short supply in some areas within the Central Valley Region, and food processors in those areas may practice water conservation measures, producing less wastewater than the average for a particular food processing industry. Due to concentration effects, this wastewater may contain more BOD and/or nitrogen than described above. Therefore, dischargers may need to analyze wastewater and residual solids periodically to determine reasonable nutrient and organic matter loading rates.
21. Some smaller food processors have determined that it is more cost effective to store some or all of their wastewater in a holding tank and then transport the wastewater to an authorized disposal facility instead of discharging wastewater to land. There is little potential for water quality degradation associated with this method of wastewater disposal. However it is appropriate to require some monitoring to ensure that such wastes are transported by appropriately licensed haulers and discharged at appropriately permitted disposal facilities.
22. CWC Section 13269 provides, *"Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring*

activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public. ... The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality." Although discharges that comply with this Order do not pose a significant threat to water quality, the Central Valley Water Board has not waived the monitoring requirements as stated above. Groundwater monitoring and analysis is not necessary due to the low volume of the discharges, the nature of the constituents, existing monitoring information from other regulated facilities and information about salinity that will become available through the CV-SALTS initiative.

23. This Order does not regulate the discharge of plain water (i.e., water to which no chemical cleaning agents have been added) used for the soaking and final sanitary cleaning of pre-cleaned or new wine barrels. This water may be disposed of in any environmentally sound manner, including vineyard or landscape irrigation or discharge to a County-regulated septic system in compliance with all applicable County regulations.
24. Small food processors, especially wineries, may expand over time and increase the volume of wastewater produced, and therefore an annual monitoring report is necessary to confirm that the food processor continues to meet the conditions of this waiver.
25. A waiver of the requirement to issue WDRs for waste discharges that (a) will cause no or insignificant impairment of water quality and (b) pose little risk of creating nuisance conditions is in the public interest because it reduces the cost of activities that produce innocuous or small amounts of waste, is protective of the environment, and allows Central Valley Water Board staff to direct resources to address waste discharges that have significant potential to degrade water quality or create nuisance.
26. For purposes of this conditional waiver for the Central Valley Region, the "Basin Plan" is one of the following:
 - a. The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition, or
 - b. The Water Quality Control Plan for the Tulare Lake Basin, Second Edition.
27. The designated beneficial uses of groundwater in the Central Valley Region, as specified in the Basin Plan, are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply.
28. The beneficial uses of surface water in the Central Valley Region are specified in each Basin Plan for specific water bodies including major rivers, creeks, and lakes, and also apply to tributaries to these water bodies. These beneficial uses potentially include municipal and domestic supply; agricultural supply; industrial service supply; industrial process supply; groundwater recharge; freshwater replenishment; navigation; hydropower generation; water contact recreation; non-contact water recreation;

commercial and sport fishing; aquaculture; warm freshwater habitat; cold freshwater habitat; estuarine habitat; wildlife habitat; preservation of biological habitats of special significance; preservation of rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and shellfish harvesting.

29. State Water Resources Control Board Resolution No. 68-16 ("Policy with Respect to Maintaining High Quality Waters of the State") (hereafter Resolution 68-16) prohibits degradation of groundwater quality unless it has been shown that:
 - a. The degradation is consistent with the maximum benefit to the people of the State;
 - b. The degradation will not unreasonably affect present and anticipated future beneficial uses;
 - c. The degradation does not result in water quality less than that prescribed in state and regional policies, including violation of one or more water quality objectives; and
 - d. The discharger employs best practicable treatment or control (BPTC) to minimize degradation.
30. This Order does not allow an increase in the volume of wastewater discharged compared to prior waivers. Although the Board previously considered Resolution 68-16 with respect to regulation of small food processors, the Board makes the following findings regarding compliance with Resolution 68-16.
31. Because of the variability of soil and groundwater conditions throughout the Central Valley Region as cited in Finding No. 11, it is not possible to state with certainty that no discharge regulated under, and in compliance with, this Order will degrade groundwater quality. However, even if it occurs, such degradation will not exceed applicable groundwater quality objectives. In addition, this Order includes the following specific requirements and conditions which constitute BPTC for the type of discharges regulated by this Order. These BPTC requirements will minimize degradation, prevent exceedance of any water quality objectives, and prevent impacts to beneficial uses:
 - a. High salinity waste streams such as water softener regenerating solution, boiler blowdown, evaporative cooling system waste, and stillage waste must be segregated and stored separately in an engineered tank system for off-site disposal at an appropriately permitted facility (they cannot be applied to land). These waste streams account for most of the excess salinity in food processing waste.
 - b. This Order applies only to:
 - i. Wineries that crush less than 80 tons of grapes per year or discharge less than 100,000 gallons of wastewater per year to land, and
 - ii. Other small food processors (e.g., fruit dehydrators, walnut hullers, seed and nut processors, olive oil processors, etc.) that discharge less than 100,000 gallons of wastewater per year to land. A winery crushing 80 tons of grapes will usually generate between 27,000 and 121,000 gallons of wastewater.

- c. No more than 100,000 gallons of wastewater may be applied to land per year at most facilities, although some small wineries that crush less than 80 tons of grapes per year will generate slightly more wastewater, all of which can be discharged on site. Order No. R5-2003-0106 included the same limitations. One hundred thousand gallons per year is equivalent to 3.7 acre-inches, which is far less water than is required by even the most drought-tolerant landscape materials. The stringent limits on the volume of waste that can be discharged should result only in localized degradation. Additionally, the majority of dischargers that land apply wastewater under this Order will require significant additional fresh water to sustain the crops or landscape materials grown in the land application area. Based on best professional judgment, this supplemental irrigation water will dilute any remaining wastewater salinity to the point where it is insignificant compared to the salinity added by fresh irrigation water from other sources.
 - d. Wineries may discharge all residual solids on site. For all other facilities, the amount of residual solids applied to land per year cannot exceed the amount associated with generation of 100,000 gallons of wastewater per year. For instance, if a covered discharger generates 500,000 gallons of wastewater and in so doing generates residual solids, only 20 percent of the residual solids (100,000 divided by 500,000) can be applied to land. The remainder of the residual solids, as well as the excess 400,000 gallons of wastewater, must be disposed of at an off-site permitted waste facility.
 - e. Wastewater and residual solids that are applied to land must be applied to crops or landscaped areas at agronomic rates for water and nutrients. This will ensure that there is not excessive leaching, which could carry pollutants to shallow groundwater. It will also ensure that degradable organic matter is transformed within the unsaturated zone in a way that benefits the soil structure and does not promote migration of organic matter to the shallow groundwater. Nutrients such as nitrogen, phosphorus, and potassium will be utilized by the plants.
 - f. This Order also includes operational restrictions to prevent discharges of wastewater or contaminated storm water runoff to surface waters. Residual solids that are readily decomposable are subject to additional operational restrictions for the same reason.
32. The economic prosperity of Central Valley communities benefits the people of the State. Dischargers that will be regulated under this Order are primarily very small wineries located in rural areas that do not have public sewer service. Small wineries and other small food processing businesses have become an important part of the local economy in several Central Valley Region counties because they employ people who work in the growing areas, processing facilities, and local tasting rooms and sales offices. In some areas, the proliferation of small wineries has created a strong tourism-based economy that supports many other people who live and work in the area.

Prior to adoption of the previous waiver, most small food processors and wineries discharged all of their wastewater to septic systems regulated by their county environmental health department. The level of treatment and control provided by septic

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systems is far less than is required by this Order, and discharges to septic systems pose a higher threat to groundwater quality than a well-managed land application and waste recycling program. Although treatment technology is available to reduce the mass of BOD and nitrify/denitrify the wastewater, the capital and operation/maintenance costs of such advanced treatment systems would likely be infeasible for the majority of small businesses that will be regulated by this Order. Experience with numerous larger food processors in the Central Valley Regional has shown that the BOD and nitrogen content of the waste can be adequately reduced by a well-managed land application/recycling program to prevent significant groundwater degradation, even in areas where groundwater is very shallow.

Therefore, the economic benefits derived from this low-cost, streamlined form of regulation support allowing limited, localized groundwater degradation as long as the terms of the Basin Plan are met.

33. Based on the above, this Order is consistent with Resolution 68-16 because it includes specific requirements and conditions of discharge that will minimize water quality degradation. Dischargers regulated under this Order are subject to enforcement action for any violations, and coverage under the conditional waiver can be terminated if the requirements and conditions are not met.
34. The Basin Plan's Antidegradation Implementation Policy states: *"Pursuant to this policy, a Report of Waste Discharge, or any other similar technical report required by the Board pursuant to Water Code Section 13267, must include information regarding the nature and extent of the discharge and the potential for the discharge to affect surface or ground water quality in the region. This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives. The extent of information necessary will depend on the specific conditions of the discharge. For example, use of best professional judgment and limited available information may be sufficient to determine that ground or surface water will not be degraded. In addition, the discharger must identify treatment or control measures to be taken to minimize or prevent water quality degradation."*

Dischargers submitting a Report of Waste Discharge to apply for coverage under this Order are not required to include a detailed site-specific analysis of the waste, groundwater conditions, or potential water quality impacts. As noted above, the character of food processing wastes is well-documented in the literature and Central Valley Water Board records. However, the Report of Waste Discharge technical information form developed for this Order requires complete disclosure of sufficient information about the operations of the facilities that will generate the waste to allow Central Valley Water Board staff to use best professional judgment to determine whether additional information is needed to show that the proposed discharge will be consistent with the conditions of this Order, and to determine whether coverage should be granted.

35. The Central Valley Water Board adopted a Negative Declaration when it adopted Resolution No. 82-036, and therefore, consistent with Title 14, California Code of Regulations (CCR) Section 15162, is not required to prepare a subsequent environmental impact report or negative declaration in renewing a specific category of discharge included in Resolution No. 82-036. The 1982 waiver (Resolution No. 82-036) and the associated 1981 Negative Declaration covered all land discharges of food processing waste, regardless of waste volume. Resolution No. 82-036 only required that dischargers of food processing waste follow an approved operating/maintenance plan. The proposed waiver, as well as Resolution No. R5-2003-0106, will reduce the intensity of land use related to regulated facilities as compared to the 1982 waiver. This is because the current program:
- a. Requires the equivalent of an operating/maintenance plan within the application form;
 - b. Incorporates strict limits on the volume of waste that can be discharged to land, which in turn limits the size of facilities that may seek coverage; and
 - c. Requires waste management practices as specific conditions of discharge.

A lead agency is only required to prepare a new CEQA document based on new information in limited circumstances. (Public Resources Code Section 21166; Title 14 CCR, Section 15162.) The "new information" test for a subsequent CEQA document has three prongs. All three prongs must be satisfied to require a new CEQA document. These three prongs are: (1) that "new" information of substantial importance becomes available; (2) that the "new information" was not known and could not have been known at the time the prior CEQA document was approved; and (3) that the "new information" shows either that the project will have one or more significant effects not previously discussed in the CEQA document or that significant effects previously examined will be substantially more severe than shown in the previous document.

Groundwater monitoring data from some food processors and wineries has been generated since the Board adopted the negative declaration. Available data are generally from facilities that are much larger than those regulated under this Order. The technology for groundwater sample collection and analysis existed well before the Board adopted the negative declaration. Thus, although the groundwater data were not considered at the time of the 1981 negative declaration, it "could have been known" had the Board started to require groundwater monitoring at an earlier time. The information gathered through the Board's regulatory programs does not demonstrate that discharges from facilities regulated by this Order can or do cause different or more significant impacts than those they might have caused in 1981-1982.

This Order limits the production capacity and/or land-applied waste volume of facilities that may enroll. This Order includes conditions that prevent any exceedances of groundwater objectives. Any limited degradation that may occur at some facilities complies with applicable regulatory standards in Resolution 68-16 and does not exceed

any threshold of significance. There is no evidence of new or different effects on water quality from the discharges regulated by the proposed Order.

Therefore, a new CEQA document is not required. In addition, the action to adopt this Resolution is exempt from CEQA pursuant to Title 14 CCR Section 15301 to the extent that it applies to existing food processors that constitute "existing facilities" as that term is used in Section 15301, whether or not such facilities obtained coverage under the previous waiver.

36. Federal regulations for storm water discharges have been promulgated by the U.S. Environmental Protection Agency (40 CFR Parts 122, 123, and 124) and require that specific categories of facilities which discharge storm water obtain an NPDES permit. Most food processors are covered under one of the specific categories. The State Water Board has adopted Order No. 97-03-DWQ (NPDES General Permit No. CAS000001 or subsequent Order) specifying waste discharge requirements for discharges of storm water associated with industrial activities, and requiring submittal of a Notice of Intent by all affected industrial dischargers. Therefore, it is appropriate to require all parties applying for coverage under this waiver to show that the operation is:
 - a. Already covered or specifically excluded from obtaining coverage under Order No. 97-03-DWQ; or
 - b. Provide one of the following:
 - i. A copy of the Notice of Intent to apply for coverage under Order No. 97-03-DWQ; or
 - ii. A Notice of Non-Applicability or a No Exposure Certification issued by Central Valley Water Board staff.
37. Section 13267(b) of the CWC provides that: *"In conducting an investigation specified in subdivision (a), the Regional Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Water Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the Regional Water Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports".*

The technical reports required by this Order and the attached Monitoring and Reporting Program No. R5-2009-0097 are necessary to evaluate each Discharger's compliance with this waiver. Each individual discharger operates the facility that discharges the waste subject to this Order.

38. Based on written comments and the testimony received at the public hearing, and based on the above noted facts and findings, the Central Valley Water Board finds that this Order waiving WDRs is in the public interest, provided that the dischargers subject to the waiver do all of the following:
- a. Submit the required RWD and filing fee to the Central Valley Water Board;
 - b. Comply with the applicable conditions of this Order, including the Monitoring and Reporting Program; and
 - c. Comply with applicable State Water Board and Central Valley Water Board plans and policies.
39. Based on the above-noted facts and findings, it is not necessary at this time to adopt individual or general WDRs for the discharges described in this Order because these types of discharges pose an insignificant threat of pollution and nuisance when managed in accordance with the conditions of this Order, and Central Valley Water Board resources should be focused on higher threat discharges. Accordingly, the discharges regulated under this Order are assigned a threat and complexity rating of 3C pursuant to Title 23 CCR, Section 2200.
40. Pursuant to CWC Section 13263(g), discharge is a privilege, not a right, and adoption of this Order and the receipt of a formal notification of coverage under this Order from the Executive Officer, does not create a vested right to continue the discharge.
41. The dischargers and other interested parties and persons were notified of the intent to adopt an Order waiving WDRs for small food processors, and were provided an opportunity to submit written comments and attend a public hearing.
42. A public hearing was held on 8 October in Rancho Cordova, California to consider all testimony and evidence concerning this matter.

THEREFORE BE IT RESOLVED that in accordance with CWC Section 13269, the Central Valley Water Board adopts this Order "Conditional Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries" (hereafter informally referred to as "Small Food Processor Waiver" or "Waiver") and waives the requirement to obtain WDRs for those dischargers who:

- a. Comply with the terms and conditions set forth herein; and
- b. Receive a waiver notification (hereafter "Notice of Applicability") signed by the Executive Officer.

A. Applicability

This Waiver shall only apply to small food processors and wineries that meet the criteria listed below. Coverage under this Waiver will only be granted to dischargers who meet the criteria, submit a complete Report of Waste Discharge, and receive a Notice of Applicability signed by the Executive Officer.

1. The Waiver applies to all small food processors except meat processors that land apply less than 100,000 gallons of process wastewater per year³ at reasonable agronomic loading rates for nutrients and reasonable hydraulic loading rates for water. Wineries may land apply all wastewater generated by processing less than 80 tons of grapes.
2. The Waiver applies to all small food processors and small wineries that store any volume of process wastewater in tank on-site prior to transporting it off-site for disposal at an appropriately permitted facility without limits as to the volume of wastewater managed in this manner.
3. The Waiver applies to small food processors except meat processors that land apply residual solids generated from winery or food processing that results in generation of less than 100,000 gallons of wastewater per year. Wineries may land apply all residual solids in compliance with the conditions specified herein.
4. The Waiver applies to small food processors and small wineries that dispose of any volume of residual solids off-site at an appropriately permitted facility.
5. Wastewater and residual solids storage/disposal methods must comply with the General Conditions listed in Section C of this Waiver.

B. Report of Waste Discharge

Each Discharger must submit a Report of Waste Discharge to apply for coverage under the Waiver as follows:

1. Dischargers that received a NOA and were covered under the previous Waiver (Resolution No. R5-2003-0106) shall submit a new Report of Waste Discharge to apply for coverage under the Waiver within **90 days** of adoption of this Order⁴.
2. Dischargers that applied for coverage under the previous Waiver (Resolution No. R5-2003-0106) after 11 July 2008 and did not receive a Notice of Applicability

³ For a typical winery, processing 80 tons of grapes to produce wine will typically yield no more than 100,000 gallons of process wastewater. For other food processors the volume of wastewater per ton processed will vary.

⁴ If the Discharger no longer meets the applicability criteria, the Discharger must submit a Report of Waste Discharge to apply for individual WDRs within **120 days** of adoption of this Order.

shall submit a new Report of Waste Discharge to apply for coverage under the Waiver within **90 days** of adoption of this Order.

3. Operators of small food processing or winery facilities that existed prior to adoption of this order but did not apply for coverage under the previous waiver and wish to be granted coverage under this Order shall submit a Report of Waste Discharge within **90 days** of adoption of this Order.
4. New small food processors or wineries that have not begun operation as of the date of adoption of this Order shall submit a Report of Waste Discharge at least **120 days** before the anticipated date of discharge.
5. To apply for coverage under this Waiver, the Discharger shall submit a Report of Waste Discharge consisting of the following:
 - a. A completed Form 200 (*Application/Report of Waste Discharge*). This document and instructions for completing it may be downloaded from the Internet at
<http://www.waterboards.ca.gov/sbforms/form200.pdf>.
 - b. A completed Form 200-R5-FP (*Report of Waste Discharge Technical Information*). This document can be downloaded from the Internet at
http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/index.shtml#Waivers
 - c. A one-time application fee for a threat and complexity of "3C" as described in Title 23, CCR, and Section 2200. The fee shall be submitted in the form of a check made payable to *State Water Resources Control Board*. The current fee schedule can be downloaded from the Internet at
http://www.waterboards.ca.gov/resources/fees/docs/waste_discharge_requirement_fees.pdf

Applicants are encouraged to contact Central Valley Water Board staff for assistance in determining the appropriate base fee and surcharge(s).
 - d. If required by Central Valley Water Board staff, a chemical analysis of key waste constituents including at a minimum five-day biochemical oxygen demand, total nitrogen, pH, and fixed (inorganic) dissolved solids.

C. Specific Conditions

All Dischargers shall comply with the following general conditions, as well as any site-specific conditions listed in the Notice of Applicability issued by the Executive Officer.

1. The discharge shall not create or threaten to create a condition of pollution, contamination, or nuisance as defined by CWC Section 13050.
2. The discharge of waste classified as "hazardous" under Title 23, CCR, and Section 2521 or as "designated" under CWC Section 13173 is prohibited.
3. The discharge of waste to surface water or surface water drainage courses is prohibited.
4. Process wastewater and residual solids shall not be placed or stored in any surface impoundment, pond, or lagoon.
5. Process wastewater and residual solids shall not be discharged to any septic system.
6. Process wastewater and residual solids applied to land shall not contain stillage waste, water softener regeneration brine, boiler blowdown, or other high salinity waste.
7. Wastewater and residual solids land application areas shall be limited to those expressly described and mapped in the Report of Waste Discharge.
8. Objectionable odors due to the storage and/or land application of process wastewater or residual solids shall not be perceivable beyond the limits of the property owned by the Discharger.
9. The Discharger shall allow Central Valley Water Board staff reasonable access onto the affected property for the purpose of performing inspections to determine compliance with the Waiver conditions.
10. The Discharger shall take all reasonable steps to reduce the salinity of the wastewater that is applied to land. These steps shall include, at a minimum:
 - a. Minimize the use of salt-containing additives in the process water and minimize the discharge of chemicals into the wastewater stream;
 - b. Minimize the use of non-biodegradable cleaners and other chemicals; and
 - c. When feasible, remove dry or solid wastes from equipment and floors before washing to prevent introduction of soluble waste constituents into the

wastewater conveyance system.

11. If wastewater is stored on-site prior to land application or off-site for disposal:

- a. Wastewater shall be fully contained so that the waste does not contact the ground.
- b. Wastewater shall be removed from storage tanks before capacity is reached and land-applied or transported off-site for disposal immediately upon removal.

12. Wastewater removed for off-site disposal shall be transported by a licensed septage hauler and discharged to a permitted wastewater treatment facility or septage receiving station. The Discharger shall obtain receipts from both the hauler and the receiving facility.

13. If wastewater is applied to land⁵:

- a. Wastewater shall not be applied to land 24 hours before a forecasted storm, during a storm, 24 hours after a storm, or when the ground is saturated.
- b. Wastewater shall be applied to cropland or landscaped areas at a rate consistent with the water needs of the crop or vegetation grown in the land application area and at agronomic rates for nitrogen and other crop nutrients present in the waste.
- c. Wastewater shall not be applied within 25 feet of a water supply well.
- d. Wastewater shall not be applied within 25 feet of a surface water drainage course unless the land application area is graded or bermed to prevent discharge of runoff into the drainage course.
- e. Wastewater shall be evenly applied across the entire land application area.

14. If residual solids are temporarily stored on-site prior to land application or off-site for disposal:

- a. Residual solids shall be fully contained so that the waste does not contact the ground.
- b. Residual solids shall be stored such that any leachate or storm water that contacts the waste is managed as wastewater in accordance with the conditions of this Order.

⁵ For meat processors, this option is not available under this Order.

- c. Residual solids drying and/or storage areas shall be designed, constructed, operated, and maintained to prevent the washout or inundation due to floods with a 100-year return frequency.
-
- 15. Residual solids shall be removed from storage tanks or areas before capacity is reached and land-applied or transported off-site for disposal immediately upon removal.
 - 16. Residual solids removed for off-site disposal shall be transported in leak-proof containers to an appropriately permitted recycling or disposal facility⁶. The Discharger shall obtain receipts from the receiving facility.
 - 17. If residual solids are applied to land⁵:
 - a. Land application methods, rates, and management practices shall be in accordance with those proposed in the Report of Waste Discharge unless the Discharger finds that specific changes are necessary to ensure continued compliance with the conditions of the Waiver.
 - b. If residual solids that contain free liquids are applied to land, the Discharger shall ensure that all liquid is absorbed into the soil within 12 hours of application and that no liquid runs off the application area.
 - c. Residual solids shall be applied to land at agronomic rates for plant nutrients based on the nutrient content of the solids, the nutrient requirements of the crops or other vegetation grown on the land application area, and the amount of other forms of fertilizer used.
 - d. Grape stems or other dry, nonputrescible matter (e.g., dry nut hulls) may be segregated from the rest of the residual solids and applied to the Discharger's property, including dirt roads, for erosion or dust control. However, such waste must be applied in a manner that prevents displacement by runoff into surface waters during storm events.
 - e. Any on-site composting shall comply with the composting regulations found in Title 14 CCR, Division 7, Chapter 3.1.

⁶ The reuse of residual solids as animal feed is not regulated under this Order. Such uses may be subject to local regulation. The Discharger is expected to take all reasonable steps to ensure that the end user has a local permit, if one is required.

18. Land application of putrescible solids⁷ shall be conducted in accordance with the following requirements:
- a. Solids shall not be applied within 25 feet of a surface water drainage course unless the land application area is graded or bermed to prevent discharge of runoff into the drainage course.
 - b. Solids shall not be applied within 25 feet of a water supply well.
 - c. Solids shall not be applied to land within 24 hours before predicted precipitation, during periods of precipitation, within 24 hours after precipitation, or when the land application area is saturated.
 - d. Solids shall be evenly applied across the entire land application area.
 - e. The total annual loading rate for putrescible residual solids shall not exceed the agronomic rate for nitrogen, or a total thickness of two inches, whichever is more restrictive.

D. General Conditions

- 1. Each Discharger granted coverage under the Waiver shall comply with Monitoring and Reporting Program No. R5-2009-0097, which is attached hereto and made a part of this Order, and with any revisions thereto as ordered by the Executive Officer.
- 2. The discharge of any waste not specifically regulated by this Waiver is prohibited unless the Discharger obtains WDRs, qualifies for coverage under another waiver, or obtains other permission from the Central Valley Water Board for the discharge of that waste.
- 3. Before making a material change in the character, location, or volume of discharge, the discharger shall submit a new Report of Waste Discharge to the Central Valley Water Board. A material change includes, but is not limited to, the following:
 - a. An increase in area to be used for waste disposal beyond that specified in the original RWD.
 - b. A significant change in disposal method, location or volume.
 - c. The addition of a new process or product by an industrial facility resulting in a change in the character of the waste.

⁷ For the purpose of this Order, putrescible solids are residual solids that contain readily decomposable organic matter and moisture such that they are likely to create objectionable odors and attract insects under ambient outdoor conditions.

4. A copy of this Order and the Notice of Applicability shall be kept at the facility for reference by operating personnel. Key operating and site management personnel must be familiar with the documents.
5. The Report of Waste Discharge, monitoring reports, and any other information requested by the Central Valley Water Board shall be signed as follows:
 - a. For a corporation: by a principal executive officer of at least the level of senior vice-president or a duly authorized representative of that person.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor or a duly authorized representative of that person.
 - c. For a municipality or public agency: by either a principal executive officer or ranking elected or appointed official or a duly authorized representative of that person.
6. Any person signing a Report of Waste Discharge, monitoring report, or other technical report makes the following certification, whether written or implied:
"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
7. All technical and monitoring reports submitted pursuant to this Waiver are required pursuant to CWC Section 13267. Failure to submit reports in accordance with schedules established by this Waiver, the attachments of this Waiver, or failure to submit a report of sufficient technical quality to be acceptable to the Executive Officer, may subject the Discharger to enforcement action pursuant to CWC Section 13268.
8. This waiver is not transferable. In the event of any change in control or ownership of land or waste discharge facilities presently owned or controlled by the Discharger, the Discharger shall notify the succeeding owner or operator of the existence of this Waiver by letter and shall inform the new owner or operator of the requirement to submit a Report of Waste Discharge at least **120 days** before commencing operation of the facility. A copy of the letter shall be immediately forwarded to the Executive Officer.
9. In the event that the Discharger does not comply, or will be unable to comply, with any conditions of this Order, the Discharger shall notify Central Valley Water Board staff by telephone as soon as it or its agents have knowledge of such

noncompliance or potential for noncompliance and shall confirm this notification in writing within two weeks. The written notification shall state the nature, time, and cause of noncompliance, shall describe the measures being taken to prevent recurrences, and shall include a timeline for corrective actions.

10. The Discharger shall permit Central Valley Water Board representatives to (a) enter premises where wastes are stored or disposed of, (b) copy any records required to be kept under the terms of this Order, (c) inspect monitoring equipment required by this Order, and (d) sample, photograph, and video tape any discharge, waste, waste management unit, or monitoring device.
11. The Discharger shall comply with all federal, state, county, and local laws and regulations pertaining to the discharge.
12. It shall not be a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce its activity in order to maintain compliance with conditions of this Waiver.
13. The Discharger must comply with all conditions of this Waiver, including timely submittal of all monitoring reports. Violations may result in enforcement action under the CWC, and could include Central Valley Water Board orders, the imposition of civil liability, cessation of coverage under this Waiver, or referral to the Attorney General.
14. Except for material determined to be confidential in accordance with California law and regulations, all reports prepared in accordance with terms of this Waiver will be available for public inspection at the Central Valley Water Board offices. Data on waste discharges, water quality, geology, and hydrogeology will not be considered confidential.
15. A discharger who discharges any waste not specifically regulated by this Waiver may not discharge such waste except in compliance with the CWC and applicable local regulations.
16. As provided by CWC Section 13350(a), any person may be civilly liable if that person, in violation of a Waiver condition or WDRs, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.
17. Pursuant to CWC Section 13269, this action waiving the issuance of WDRs for small food processors (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, (e) requires monitoring and (f) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the CWC.

Conditional Waiver of Waste Discharge Requirements for
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18. The Executive Officer or Central Valley Water Board may terminate the applicability of the Waiver for any individual discharger at any time when such termination is in the public interest or the activity could affect the quality or beneficial uses of the waters of the State.
19. This Waiver shall become effective on 8 October 2009 and shall expire on 8 October 2014, unless terminated or renewed by the Central Valley Water Board prior to that time.
20. The Central Valley Water Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety, as applicable for a specific type of food processing discharge, or for individual dischargers, as appropriate.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 8 October 2009.

Original signed by

PAMELA C. CREEDON, Executive Officer

ALO: AMENDED 10/19/09

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

MONITORING AND REPORTING PROGRAM NO. R5-2009-0097

FOR ORDER NO. R5-2009-0097
A CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
SMALL FOOD PROCESSORS AND SMALL WINERIES
WITHIN THE CENTRAL VALLEY REGION

This Monitoring and Reporting Program (MRP) describes requirements for monitoring discharges from small food processors and wineries that are regulated under Order No. R5-2009-0097, *A Conditional Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries within the Central Valley Region* (the Waiver).

This MRP is issued pursuant to Section 13267 of the California Water Code. The Discharger shall not implement any changes to this MRP unless and until a revised MRP is issued by the Executive Officer.

Each Discharger granted coverage under the Waiver shall submit an annual monitoring report no later than **1 February** of each year. The report shall describe process waste management activities during the previous calendar year, and shall contain the following information. Dischargers are encouraged to use the attached *Annual Monitoring Report* form, but are not required to do so.

1. A statement of whether wastewater was applied to land, whether wastewater was stored on-site and hauled off-site for disposal, whether residual solids¹ were applied to land, and whether residual solids were disposed of off-site.
2. If wastewater was applied to land, then provide:
 - a. For wineries:
 - i. The weight of grapes crushed in tons.
 - ii. If more than 100,000 gallons of wastewater were generated, a data table showing the monthly process wastewater flow measurements and the total gallons of wastewater produced during the calendar year.
 - iii. A statement specifying how flow measurements were made.

¹ Residual solids are defined as plant matter that is generated during processing or separated from a wastewater stream for separate handling. Residual solids include leaves, stems, seeds, skins, pulp and settleable solids from fruit, vegetable, or grain processing. Putrescible solids are residual solids that contain readily decomposable organic matter and moisture such that they are likely to create objectionable odors and attract insects under ambient outdoor conditions.

- b. For food processors:
 - i. The dates that processing occurred.
 - ii. If more than 100,000 gallons of wastewater were generated, a data table showing the monthly process wastewater flow measurements and the total gallons of wastewater produced during the calendar year.
- c. For all Dischargers:
 - i. The number of acres to which wastewater was applied.
 - ii. The approximate dates of discharge.
 - iii. The crop(s) grown.
 - iv. A description of how wastewater was applied evenly over the entire acreage and how it was kept out of surface waters.
 - v. A statement verifying compliance with setback requirements.
 - vi. Whether nuisance odors were prevented.
 - vii. How the wastewater was stored so that it was not applied to land during periods of precipitation or when the ground is saturated.
- 3. If wastewater was stored on-site and then taken off-site for disposal, provide:
 - a. Copies of receipts from the licensed septic hauler or disposal facility indicating the date and volume of wastewater transported for off-site disposal.
 - b. The results of a monthly inspection of the condition of the storage tank(s). The inspection shall focus on the potential for spillage and leakage.
- 4. If residual solids were applied to land, provide:
 - a. An estimation of the amount of residual solids generated.
 - b. A description of how and where residual solids were stored.
 - c. The amount of residual solids disposed of on-site and the amount of residual solids removed for disposal off-site.
 - d. The location of the land application area, acreage, and crops planted.
- 5. If residual solids were taken off-site for disposal, provide copies of receipts from the licensed hauler and the disposal facility.
- 6. A discussion of all actions taken to reduce the salinity of the wastewater applied to land.
- 7. A discussion of any violations of the Waiver conditions during the reporting period and actions taken or planned for correcting noted violations, such as operational or facility modifications. If the Discharger has previously submitted a report describing corrective

actions and/or a time schedule for implementing the corrective actions, reference to the previous correspondence will be satisfactory.

If the Discharger elects not to use the attached monitoring report form, a transmittal letter shall accompany each *Annual Monitoring Report*. The letter shall clearly identify the Discharger name, facility name, mailing address, and county. The transmittal letter shall contain the following statement and the signature of the Discharger or the Discharger's authorized representative:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The Discharger shall implement the above monitoring program as of the date of coverage under the Waiver.

Original signed by

PAMELA C. CREEDON, Executive Officer

8 October 2009

Date

ALO: AMENDED 10/15/09